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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,679	09/19/2003	Ikao Hayaishi	MIPEP056	6260
25920 7590 02/20/2009 MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085				
EXAMINER				
VU, NGOC YEN T				
ART UNIT		PAPER NUMBER		
2622				
MAIL DATE		DELIVERY MODE		
02/20/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/665,679

Applicant(s)

HAYAISHI ET AL.

Examiner

NGOC-YEN T. VU

Art Unit

2622

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 5, 7, 16-18, 21, 23, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 7, 16-18, 21, 23, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-849)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Please note that the examiner has changed. Subsequent communications to the Office should be addressed to the new examiner.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/15/2008 has been entered.

Response to Amendment

2. The amendments, filed 09/15/2008, have been entered and made of record. Claims 1-2, 5, 7, 16-18, 21, 23, 32 and 33 are pending and considered on the merits.

Response to Arguments

3. Applicant's arguments with respect to claims 1, 16, 17, 32 and 33 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 33 is rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 33 defines a computer program product with descriptive material while the specification defines a data signal embedded in a carrier wave containing such a computer program (specification, page 2, paragraph [0007]. While “functional descriptive material” may be claimed as a statutory product (i.e., a “manufacture”) when embodied on a tangible computer readable medium, a [signal, carrier wave, etc.] embodying that same functional descriptive material is neither a process nor a product (i.e., a tangible “thing”) and therefore does not fall within one of the four statutory classes of 101. Rather, “signal” is a form of energy, in the absence of any physical structure or tangible material.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 1-2, 5, 7, 16-18, 21, 23, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loui et al (US #6,636,648) in view of Savakis et al. (US #6,535,636), and further in view of Kuwata et al. (US #6,392,759).

Regarding claim 1, Loui discloses an image processing device (Fig. 1) for selecting an image (col. 6:31 - col. 7:6 - an image not detected as a dud is a selected image) and transferring the selected image to an image output section (printer 28) that outputs the selected image (col. 4:28-31; col. 7:23-27) according to image data generated by an image generating device and image generation record information associated with the image data (col. 10:21-24, 27-37), the

image generation record information including at least operation information of the image generating device at the time that the image data is generated (Fig. 6, col. 10:24-27, 48-63), the image processing device comprising:

an analyzer configured to analyze both the image data and the image generation record information associated with the image data to determine an image quality parameter relating to quality of an image represented by the image data (Fig. 6 - the overall image quality parameter includes detecting duplicate images using the date/time when the image was taken; col. 5:52 - col.6:19; col. 10:38 - col. 11:8); and

a selector configured to perform, on the basis of the image quality parameter, an output target decision regarding whether to select the image data as an output target (Fig. 6, col. 6:30 - col.7:22; col. 11:15-26).

In column 6, lines 30-52, Loui expressly discloses US Patent 6,535,636 (Savakis et al.) in which the analyzer calculates an edge amount at each pixel position in the image and determines the image quality parameter using the edge amounts (Savakis, col. 3:6 - col. 4:6).

Loui fails to teach the edge amounts are weighted by a weight distribution that is determined according to the image generation record information. In the same field of endeavor, Kuwata teaches an edge-enhancement processing apparatus in which an image quality parameter (image is determined to be excellent - col. 15: 61 - col. 16:2) is determined using edge amounts weighted by a weight distribution that is determined according to image generation record information (Fig. 21; col. 15:1-25). In light of the teaching in Kuwata, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the image quality parameter using the edge amounts weighted by a weight distribution in the image

processing device of Loui in order to obtain edge enhancement processing at an optimum enhancement level.

Regarding Claim 2, Loui as modified by Kuwata teaches the image processing device according to claim 1 wherein the weight distribution is determined based on subject location information (Kuwata; Figs. 11-12, col. 2:15-25) which is included in the image generation record information (Loui, col. 10:55-63).

Regarding Claim 5, Loui as modified by Kuwata teaches the image processing device according to claim 1 wherein the analyzer determines a first characteristic value of the quality characteristic parameter that indicates a characteristic relating to sharpness of the image (Loui; col. 47-52) (Savakis, col. 3: 2-15), and the selector performs the output target decision on the basis of the first characteristic value (Loui; col. 6:30 – col. 7:6) (Savakis, col. 3:56 – col. 4:6).

Regarding Claim 7, Loui as modified by Kuwata teaches the image processing device according to claim 5 wherein the image generation record information includes subject location information for the image (Loui, col. 10:55-63), and the analyzer determines the first characteristic value using the subject location information (Loui, col. 6:30 – col. 7:6).

Regarding claims 16, 17, 32 and 33, although the wording is different, the material is considered substantively equivalent to the material associated with claim 1 as discussed above. It is noted that both Loui and Kuwata also teaches an output section (Loui, Fig. 1, printer 28 or display 14) (Kuwata, Fig. 1, output device 30).

Regarding claims 18, 21 and 23, although the wording is different, the material is considered substantively equivalent to the material associated with claims 2, 5 and 7, respectively, as discussed above.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGOC-YEN T. VU whose telephone number is (571)272-7320. The examiner can normally be reached on Mon. – Fri. from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on 571-272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

***/Ngoc-Yen T. VU/
Primary Examiner, Art Unit 2622
02/16/2009***